THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

and

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT APPEAL No.2028 of 2005

Date: 24-10-2005

Between:

Marvel Granites …Appellant

And

The Regional Provident Fund Commissioner …Respondent

THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

and

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT APPEAL No.2028 of 2005

J U D G M E N T (Per the Hon'ble Sri Bilal Nazki, ACJ):

Heard learned counsel for the parties.

The writ appeal is filed against the order passed by the learned Single Judge in Writ Petition No.18311 of 2005. The Assistant Provident Fund Commissioner (Enforcement), Guntur, issued proceedings on 16-05-2005 under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short "the Act") on the basis of his conclusion that petitioner's firm and two other establishments i.e., M/s Sri Priya Granites and M/s Sri Sai Teja Enterprises

functionally, geographically and on the basis of unity of ownership as well as financial integrity constitute one establishment though having discrete structural mechanisms and he accordingly held that on the basis of the employment particulars of the three firms put together, the establishments should be treated as one and would be covered under the provisions of the Act. This order has been challenged by the petitioner in an appeal before the Employees Provident Fund Appellate Tribunal. Along with the appeal, he filed an application seeking stay of the assessment proceedings. The appellate authority has refused to stay the assessment proceedings and therefore, the writ petition was filed. The learned Single Judge came to the conclusion that since, *prima facie*, the fact finding authority had come to the conclusion that these three concerns were one concern and were only divided for the purpose of defeating the provisions of the Act, therefore, the Court would not interfere and in any case, this matter had to be decided by the appellate authority and during pendency of the appeal, if assessments were made, that would not going to harm the petitioner in any way, because that assessment would be subject to the outcome of the appeal pending before the appellate authority. In these circumstances, we do not think that there is any ground for us to interfere in the orders passed either by the appellate authority or by the learned Single Judge.

The writ appeal is accordingly dismissed. No order as to costs.

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(Bilal Nazki, ACJ)

24th October, 2005

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(R.Subhash Reddy,J)

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